

**BEFORE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY**

DEPARTMENT OF SAFETY,]	
]	
vs.]	DOCKET # 19.01-104849J
]	DOS# J0826
\$32,200.00 in U.S. Currency]	
Seized From: Velma Booker]	
Seizure Date: February 6, 2009]	
Claimant: Velma Booker]	
Seizing Agency: Memphis P.D.]	

INITIAL ORDER

This contested administrative case was heard in Memphis, Tennessee, on March 1, 2010, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Staff Attorney for the Tennessee Department of Safety, represented the Seizing Agency. The Claimant was represented by her legal counsel, Mr. Taurus Bailey.

This hearing was convened to consider the proposed forfeiture of \$32,200.00 in U.S. currency, based on allegations that the Claimant's possession and/or receipt of that money was in violation of the Tennessee Drug Control Act. Upon full consideration of the record in this case, it is determined that the proposed forfeiture should be denied, and that the money should be returned to the Claimant. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On February 4, 2009, an officer with the Memphis Police Department observed a vehicle bearing license plates that were issued to another vehicle. The officer stopped the vehicle and approached the driver, Velma Booker ("the Claimant").

2. After the Claimant produced her license, as requested, the officer asked her to step out of the car, searched her and escorted her to his patrol car. He then proceeded to search her vehicle.¹

3. During the search, the officers found a bag under the car seat that contained \$32,200.00 in U.S. currency, all in \$100.00 bills. No evidence linked to any criminal conduct was found in the car, and the Claimant was not charged with any criminal offense. The police department kept her money. She was cited for violation of the vehicle registration law, and financial responsibility law, and was released from custody.

4. Following its seizure of the Claimant's money, the Memphis Police Department sought and obtained a Property Forfeiture Warrant, on their assertion that it was received or possessed in violation of the State's drug laws. The Claimant filed a petition for return of the seized money, resulting in the scheduling of the instant contested administrative case hearing.

5. The Claimant was released from Federal custody in March 2005, after serving five years for a 2001 conviction for cocaine possession. She was on parole at the time of the vehicle stop and currency seizure. The State offered no evidence linking the Claimant to any criminal activity since her 2001 conviction. Specifically, no evidence in the record links the seized money to any illegal drug activity.

6. The Claimant testified that, since her release from prison, she has avoided any criminal activity, and has worked continuously, usually working more than one job at a time, and has been able to save a substantial sum of money. During the two years preceding the February 2009 incident, she earned nearly \$60,000.00 annually from a tax preparation service, **and** \$80,000.00 annually from an ice cream vending company that she owns. The cash in her car was earmarked for the down payment on a building that

¹ Prior to the hearing, the Claimant filed a Motion to Suppress, contending that the search was not authorized by law, and seeking the exclusion of all evidence found in the car. That motion was considered and denied by ALJ Springfield in an Order entered on February 5, 2010. Her decision is therefore the "law of the case," and cannot be revisited as an issue at this hearing.

she hoped to purchase the following day. Her proven legitimate income over the previous few years was clearly sufficient to generate the amount of cash found in her car.

CONCLUSIONS OF LAW and ANALYSIS

1. The State bears the burden of proof in this case, and must therefore prove, by a preponderance of the evidence, that the seized currency is subject to forfeiture, pursuant to law. Failure to carry the burden of proof operates as a bar to the proposed forfeiture. TENN. CODE ANN. § 53-11-201(d)(2); *Rule 1340-2-2-.15*, TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*.

2. “Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, . . . all proceeds traceable to such an exchange, and all moneys . . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act . . . ” are subject to forfeiture under the law. TENN. CODE ANN. § 53-11-451(a)(6)(A).

3. In the instant proceeding, the State contends that the currency seized from the Claimant’s car was received in “exchange for controlled substances,” or “proceeds traceable” to the illegal sale of drugs, or that the Claimant intended to use the money “to facilitate [a] violation of the Tennessee Drug Control Act.” While the State offered no direct proof of such conduct by the Claimant, the State may be entitled to benefit from circumstantial evidence, reasonable inferences that may be drawn from facts proven during the hearing, and certain presumptions and inferences that have been established by prior judicial decisions. *See, Lettner v. Plummer*, 559 S.W.2d 785. (Tenn. 1977).

4. For example, in a forfeiture proceeding such as this one, proof that a Claimant has a *substantial criminal record for felony drug sales* may legitimately raise an issue concerning the source of the Claimant’s income. *See, Lettner v. Plummer, supra*. In *United States v. Edwards*, 885 F.2d 377, 390 (7th Cir. 1989) the court held that,

Where a defendant’s verifiable income cannot possibly account for the level of wealth displayed and where there is strong evidence that the

defendant is a drug trafficker, then there is probable cause to believe that the wealth is either a direct result of the illicit activity or that it is traceable to the activity as proceeds.

So, the fact that a person with a history of drug trafficking has accumulated money far in excess of her legitimate income is evidence from which it may be concluded that she has derived substantial income from her drug trade. Furthermore, such evidence may support a general finding that the illegal income was the source of property seized under a drug forfeiture statute. *See, United States v. Two Parcels of Real Property*, 92 F.3d 1123, 1128 (11th Cir. 1996) (evidence that claimants are generally engaged in the drug business over a period of time, have no visible source of substantial income, use cash for large purchases, and use nominee owners for property is probative of illegal source of funds to acquire seized property). Also, while it is not necessary that the Seizing Agency be able to trace the seized currency to a specific drug transaction [*Lettner v. Plummer*, *supra*, at 787], it is still necessary to prove that some drug transaction occurred, before any presumption comes into play.

5. *Once the State proves that the Claimant has a substantial history of trafficking in drugs*, these cases, and many others,² stand for the proposition that, under limited circumstances, it may be concluded that currency and other property found in the possession of a person was derived from illegal drug transactions, if those assets are valued “far in excess of his legitimate income.” In the present case, however, the State failed to prove the required elements of the two-prong foundation that must exist in support of such a conclusion: (1) that the Claimant has a *substantial history of drug trafficking*, and (2) that the *value of the assets seized was far in excess of her legitimate income and assets*.

² *See generally: United States v. All Assets and Equipment*, 58 F.3d 1181, 1189 (7th Cir. 1995); cert. Den. 516 U.S. 1042 (evidence of couple’s past known drug activity and convictions, great discrepancy between couple’s legitimate income and value of assets acquired prove sufficient nexus between seized property and narcotics activity to justify forfeiture); *United States v. One Mercedes 560 SEL*, 919 F.2d 327, 331-332 (5th Cir. 1990) (government met burden for forfeiture from Defendants with significant drug involvement, by showing deposit of substantial funds into checking account, purchase of luxury automobile, expenditure of large sums of money, and when compared with tax return, income was substantially less); *United States v. Thomas*, 913 F.2d 1111, 1114-1115 (4th Cir. 1990) (reversing dismissal of forfeiture complaint where cash expenditures of Claimant far exceeded his legitimate source of income coupled with evidence of Claimant’s narcotics criminal record).

6. Until the State first proves the Claimant's *substantial involvement in prior drug transactions*, it is not entitled to an inference that the money in her possession was derived from the sale of drugs.³ According to the testimony of the Seizing Agency's officer, the Claimant was not suspected of any recent illegal drug activity prior to the date of the search. The Seizing Agency offered no proof of the Claimant's involvement in any drug activity. What they did prove was that she was convicted of a single drug charge eight years before the seizure, and that she served a prison sentence for that crime. So, while the State has proven that the Claimant was, in the past, involved with drugs, it failed to prove any recent substantial drug activity. Under the State's theory, the Claimant must have sold a substantial quantity of drugs in order to accumulate the sum of money found in her car. But, the State failed to prove the Claimant's participation in *even one* drug transaction.

7. Additionally, the State failed to prove that the *value of the seized currency far exceeds the Claimant's legitimate income*. For several years prior to the seizure, the Claimant had earned \$130,000.00 to \$140,000.00 annually from two legitimate business enterprises. She testified that the large sum of cash found in her car was intended as a down-payment on a business property that she hoped to purchase the next day. The State failed to refute any of the Claimant's testimony related to the source of the money that was found in her car, or to prove any alternative series of events resulting in the money being in her possession. She established a legitimate source of the funds. Therefore, even if the State had proved that the Claimant was currently a substantial trafficker in the drug trade, the State would not be entitled to a presumption that the Claimant's money was the proceeds of drug sales.

8. In summary, the State offered no direct evidence proving that the seized money was acquired from the sale of drugs. And, having failed to prove (1) that the Claimant has a *substantial recent history of drug trafficking*, **and** (2) that the *value of the currency seized was far in excess of her legitimate income*, the State is not entitled to the benefit of

³ See generally, *Fullenwider v. Lawson*, 1992 WL 319464 (Tenn. Ct. App.) (forfeiture of large sum of currency found in car disallowed where State failed to prove that unemployed claimants were drug traffickers.)

any presumptions or inferences with respect to the origin of the seized currency. Without direct or circumstantial evidence of the Claimant's involvement in illegal drug transactions, or a valid inference upon which to rely, it is not possible to conclude that the seized property was rendered subject to forfeiture pursuant to the Tennessee Drug Control Act. While the State could offer no such direct proof in this case, the seizing officer testified that he believed the seized currency may have been received in trade for drugs. It would be highly inappropriate, and in derogation of her Constitutional protections, to deprive a citizen of her property based simply on such speculation and conjecture. Having failed to provide a nexus between illegal drug transactions and the money seized from the Claimant, the State has simply failed to carry its burden of proof. Failure to carry the burden of proof operates as a bar to the proposed forfeiture. TENN. CODE ANN. § 53-11-201(d)(2); *Rule 1340-2-2-.15*, TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*.

Accordingly, it is hereby concluded that the State failed to prove, by a preponderance of the evidence, that the currency seized from the Claimant in this case was the proceeds of illegal drug transactions, as alleged in the *Drug Asset Forfeiture Warrant*.

It is therefore ORDERED that the \$32,200.00 seized from the Claimant on February 6, 2009 shall be returned to the Claimant.

Entered and effective this 17th day of March, 2010.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 17th day of March, 2010.

A handwritten signature in black ink, reading "Thomas G. Stovall". The signature is fluid and cursive, with the first name "Thomas" and last name "Stovall" clearly legible. It is positioned above a horizontal line.

Thomas G. Stovall, Director
Administrative Procedures Division